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| APPLICATION NO.  | FILED DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|------------|----------------------|---------------------|------------------|
| 09/887,916   | 06/21/2001 | Shigehiro Kondo      | 42826.00008         | 7451             |
| 30256  | 7590       | 10/31/2003           | EXAMINER            |                  |
| SQUIRE, SANDERS & DEMPSEY L.L.P.<br>600 HANSEN WAY<br>PALO ALTO, CA 94304-1043 |            |                      | WEINSTEIN, STEVEN L |                  |
|  |            |                      | ART UNIT            | PAPER NUMBER     |
|  |            |                      | 1761                |                  |

DATE MAILED: 10/31/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 09/887,916             | KONDO, SHIGEHIRO    |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Steven L. Weinstein    | 1761                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 12 September 2003.

2a) This action is FINAL.                  2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

4) Claim(s) 1,2,5-20 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1,2,5-20 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Disposition of Claims**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
 If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
 \* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
 a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

|  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2 and 5-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krubicza (EP 878,536) in view of applicant's admission of the prior art, Spack (GB 925305), Matsuki (JP 11-169160), further in view of Kanai (JP 5-76340), Mikami et al (JP 4-62365) and Richter (DE 3532160), all relied on for the reasons given previously, further in view of Tajima (JP 61-227772), Ortiz (Encyclopedia of Herbs, spices and flavorings, Dk, 1992), Meija Seika Kaisha (JP 4-2 62767), Juhachisakari Shuzo (JP 1-317380), Kikunoka Shuzo (JP 4-40882), Hashimoto et al (JP 2000-309310), Okura Shuzo (JP 58-170471).

Claim 1 now recites that the ear of rice is pasteurized using a second pasteurization different from that of the Sake. Both Tajima and Ortiz are relied on as further evidence of providing edible bottled liquids with added solid materials which are provided to add to the appearance of the bottled liquid. Ortiz even states that <sup>the</sup> ~~a~~ solid material, a sprig of the herb used to make the flavored liquid, not only makes an attractive finishing touch but also helps to identify one of the components of the liquid, i.e. the flavoring ingredient. Note, too, that Tajima adds a flavor to Sake and treats the flower with an aqueous solution of ethanol before introducing it into the sake. Ethanol is, of course, a notoriously old antibacterial and would inherently have the effect of

sterilizing the flower to be added to the liquid. This chemical sterilant, which applicants recited "pasteurizing" agents are as, well) would generally not be added to liquids for the practical reason that they would affect the liquid. The art taken as a whole clearly teaches the use of ethanol, a chemical antibacterial agent, is to be applied to solid additions to a liquid prior to their addition in order to provide surface sterilizing of the solid. Juhachi Sakari Shuzo is another example of sterilizing (the English translation from the Japanese says pasteurizing but it is more a sterilizing) a solid additive (i.e. octopus) to be added to a liquid (in this case sake) prior to combining the two. Like Tajima, Juhachisakari Shuzo employs ethanol as the "pasteurizing" agents. Meij. Seika Kaisha, another reference that sterilizes octopus pieces before adding it to a drink, uses heating. Kikumoka Shuzo further evidences applicant's admission that the prior art employs pasteurizing temperatures for sake (which temperatures will vary with the alcohol content) as does Okura Shuzo who discloses pasteurizing at the recited temperatures before filling (i.e. aseptic) and Okura Shuzo who disclosures pasteurization of sake but points out that the temperatures can cause a negative effect on flavor and taste. Thus, the art, taken as a whole, teaches providing liquids (including sake) with solid articles which add to the appearance of the product and even help identify at least one of the ingredients; that it was known to pasteurize Sake; and that it was known that if one adds a solid article to a liquid such as a drink, one should treat the article with a chemical antibacterial before combining the liquid and solid. The recited two different pasteurizations would have been obvious in view of the art taken as a whole, since the art teaches two different methods of handling solids and liquids.

Also, one would not heat a liquid beyond the point where it is negatively affected by the temperature. It is also common sense. Ethanol or other antibacterial<sup>s</sup> are a very effective way to eliminate bacteria. Claim 6 does not recite alcohol and boiling water as agents for pasteurizing the ear of rice, but the chemical substances still recited are all notoriously well-known antibacterials agents.

In regard to the new claims whose limitations have not been addressed above or previously, in regard to claim 10, it would have been obvious to employ a bottle that is "not offensive" to the taste of Sake-to do otherwise would make no sense. The other limitations have been addressed above or previously.

All of applicant's remarks, filed September 12, 2003, have been fully and carefully considered but have either been addressed above or are seen to be moot in view of the new ground of rejection.

Any inquiry concerning this communication from the examiner should be directed to Steven Weinstein whose telephone number is (703) 308-0650. The examiner can generally be reached on Monday-Friday from 7:00 a.m. to 3:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703) 308-3959. The fax phone number for the organization where this application is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

S. Weinstein/dh  
Corrected

October 22, 2003

*Steve Weinstein*  
STEVE WEINSTEIN  
PRIMARY EXAMINER 1761  
*10/28/03*